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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PABLO RAMOS,	)	Case No. EDCV 12-0872-JPR
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
vs.	)	AFFIRMING THE COMMISSIONER
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of	)	
Social Security, <sup>1</sup>	)	
	)	
Defendant.	)	
	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security disability insurance benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed March 22, 2013, which the Court has taken under submission without oral argument. For the reasons stated

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<sup>1</sup> On February 14, 2013, Colvin became the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d), the Court therefore substitutes Colvin for Michael J. Astrue as the proper Respondent.

1 below, the Commissioner's decision is affirmed and this action is  
2 dismissed.

## 3 **II. BACKGROUND**

4 Plaintiff was born on September 13, 1962. (Administrative  
5 Record ("AR") 137.) He obtained a sixth-grade education in  
6 Mexico, and he understands some English but cannot speak, read,  
7 or write in English. (AR 57-58.) Plaintiff previously worked as  
8 an assembler of camper shells. (AR 151-52, 157-58.)

9 On June 11, 2009, Plaintiff filed an application for DIB.  
10 (AR 137-42.) He alleged that he had been unable to work since  
11 December 22, 2006, because of pain in his lower back and right  
12 arm that stemmed from injuries in a work-related accident in June  
13 2006. (AR 58-62, 146-51, 250.) His application was denied  
14 initially, on September 10, 2009 (AR 83-87), and upon  
15 reconsideration, on January 14, 2010 (AR 88-92).

16 After Plaintiff's application was denied, he requested a  
17 hearing before an Administrative Law Judge ("ALJ"). (AR 94-100.)  
18 A hearing was held on November 1, 2010, at which Plaintiff, who  
19 was represented by counsel, appeared and testified through a  
20 Spanish-language interpreter; a vocational expert ("VE") also  
21 testified. (AR 47-78.) In a written decision issued January 7,  
22 2011, the ALJ determined that Plaintiff was not disabled. (AR  
23 27-46.) On February 6, 2012, the Appeals Council incorporated  
24 additional evidence into the record but denied Plaintiff's  
25 request for review. (AR 10-15, 563-67.) This action followed.

## 26 **III. STANDARD OF REVIEW**

27 Pursuant to 42 U.S.C. § 405(g), a district court may review  
28 the Commissioner's decision to deny benefits. The ALJ's findings

1 and decision should be upheld if they are free of legal error and  
2 supported by substantial evidence based on the record as a whole.  
3 Id.; Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420,  
4 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d 742, 746  
5 (9th Cir. 2007). Substantial evidence means such evidence as a  
6 reasonable person might accept as adequate to support a  
7 conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue,  
8 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla  
9 but less than a preponderance. Lingenfelter, 504 F.3d at 1035  
10 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.  
11 2006)). To determine whether substantial evidence supports a  
12 finding, the reviewing court "must review the administrative  
13 record as a whole, weighing both the evidence that supports and  
14 the evidence that detracts from the Commissioner's conclusion."  
15 Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1996). "If the  
16 evidence can reasonably support either affirming or reversing,"  
17 the reviewing court "may not substitute its judgment" for that of  
18 the Commissioner. Id. at 720-21.

#### 19 **IV. THE EVALUATION OF DISABILITY**

20 People are "disabled" for purposes of receiving Social  
21 Security benefits if they are unable to engage in any substantial  
22 gainful activity owing to a physical or mental impairment that is  
23 expected to result in death or which has lasted, or is expected  
24 to last, for a continuous period of at least 12 months. 42  
25 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
26 (9th Cir. 1992).

##### 27 A. The Five-Step Evaluation Process

28 The ALJ follows a five-step sequential evaluation process in

1 assessing whether a claimant is disabled. 20 C.F.R.  
2 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
3 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
4 Commissioner must determine whether the claimant is currently  
5 engaged in substantial gainful activity; if so, the claimant is  
6 not disabled and the claim must be denied. § 404.1520(a)(4)(i).  
7 If the claimant is not engaged in substantial gainful activity,  
8 the second step requires the Commissioner to determine whether  
9 the claimant has a "severe" impairment or combination of  
10 impairments significantly limiting his ability to do basic work  
11 activities; if not, a finding of not disabled is made and the  
12 claim must be denied. § 404.1520(a)(4)(ii). If the claimant has  
13 a "severe" impairment or combination of impairments, the third  
14 step requires the Commissioner to determine whether the  
15 impairment or combination of impairments meets or equals an  
16 impairment in the Listing of Impairments ("Listing") set forth at  
17 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is  
18 conclusively presumed and benefits are awarded.  
19 § 404.1520(a)(4)(iii). If the claimant's impairment or  
20 combination of impairments does not meet or equal an impairment  
21 in the Listing, the fourth step requires the Commissioner to  
22 determine whether the claimant has sufficient residual functional  
23 capacity ("RFC")<sup>2</sup> to perform his past work; if so, the claimant  
24 is not disabled and the claim must be denied.  
25 § 404.1520(a)(4)(iv). The claimant has the burden of proving  
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27 <sup>2</sup> RFC is what a claimant can do despite existing  
28 exertional and nonexertional limitations. 20 C.F.R. § 404.1545;  
see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 that he is unable to perform past relevant work. Drouin, 966  
2 F.2d at 1257. If the claimant meets that burden, a prima facie  
3 case of disability is established. Id. If that happens or if  
4 the claimant has no past relevant work, the Commissioner then  
5 bears the burden of establishing that the claimant is not  
6 disabled because he can perform other substantial gainful work  
7 available in the national economy. § 404.1520(a)(4)(v). That  
8 determination comprises the fifth and final step in the  
9 sequential analysis. § 404.1520; Lester, 81 F.3d at 828 n.5;  
10 Drouin, 966 F.2d at 1257.

11 B. The ALJ's Application of the Five-Step Process

12 At step one, the ALJ found that Plaintiff had not engaged in  
13 any substantial gainful activity since December 22, 2006. (AR  
14 32.) At step two, the ALJ concluded that Plaintiff had the  
15 severe impairments of "degenerative disc disease of the neck and  
16 back, right shoulder impairment, and obesity." (Id.) At step  
17 three, the ALJ determined that Plaintiff's impairments did not  
18 meet or equal any of the impairments in the Listing. (AR 33.)  
19 At step four, the ALJ found that Plaintiff retained the RFC to  
20 perform light work<sup>3</sup> as follows:

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23 <sup>3</sup> "Light work" involves "lifting no more than 20 pounds  
24 at a time with frequent lifting or carrying of objects weighing  
25 up to 10 pounds." 20 C.F.R. § 404.1567(b). The regulations  
26 further specify that "[e]ven though the weight lifted may be very  
27 little, a job is in this category when it requires a good deal of  
28 walking or standing, or when it involves sitting most of the time  
with some pushing and pulling of arm or leg controls." Id. A  
person capable of light work is also capable of "sedentary work,"  
which involves lifting "no more than 10 pounds at a time and  
occasionally lifting or carrying [small articles]" and may  
involve occasional walking or standing. § 404.1567(a)-(b).

1 the claimant can lift and/or carry 20 pounds occasionally  
2 and 10 pounds frequently; he can stand and/or walk for  
3 six hours out of an eight-hour workday with regular  
4 breaks; he can sit for six hours out of an eight-hour  
5 workday with regular breaks; he is limited to occasional  
6 postural activities; he cannot work above shoulder level  
7 on his right; he must avoid concentrated exposure to  
8 extreme cold, vibrations, and hazards.

9 (Id.) Based on the VE's testimony, the ALJ concluded that  
10 Plaintiff was unable to perform any past relevant work. (AR 41.)  
11 At step five, the ALJ concluded that Plaintiff was not disabled  
12 under the framework of the Medical-Vocational Guidelines, 20  
13 C.F.R. Part 404, Subpart P, Appendix 2, and that jobs existed in  
14 significant numbers in the national economy that Plaintiff could  
15 perform. (Id.) Based on the VE's testimony, the ALJ found that  
16 Plaintiff could perform such jobs as production assembler (DOT  
17 706.687-010, 1991 WL 679074), cook helper (DOT 317.687-010, 1991  
18 WL 672752), and cleaner/housekeeper (DOT 323.687-014, 1991 WL  
19 672783). (Id.) Accordingly, the ALJ determined that Plaintiff  
20 was not disabled. (Id.)

## 21 **V. RELEVANT FACTS**

22 On June 19, 2006, Plaintiff was injured in a work-related  
23 accident. (AR 205, 250.) He continued to work, however, until  
24 December 2006, when he was laid off. (AR 54, 250.) In January  
25 2007 Plaintiff attempted to work as a laborer but stopped after a  
26 short time because of pain in his back and right arm. (AR 55,  
27 157.) After he was laid off, Plaintiff filed a workers'  
28 compensation action in connection with his workplace injury. (AR

1 54, 135, 192-93, 195-98, 489.) As the ALJ noted (AR 35), almost  
2 all of the medical evidence in the record stems from Plaintiff's  
3 evaluation and treatment in connection with his workers'  
4 compensation case.

5 On April 10, 2008, Plaintiff had MRIs performed of the  
6 lumbar and cervical spine. (AR 272-74, 278-80.) The lumbar-  
7 spine MRI showed "[d]iffuse mild spondylosis," congenital  
8 stenosis of the thecal sac, and posterior disc bulges of one to  
9 two millimeters at the L3-L4 level and five to six millimeters at  
10 the L5-S1 level "without evidence of neural foraminal narrowing"  
11 or of spondylolysis, spondylolisthesis, or signal abnormality.  
12 (AR 272-73.) The cervical spine MRI showed "[d]iffuse  
13 spondylosis," a one- to two-millimeter posterior disc bulge at  
14 the C2-C7 level with uncovertebral osteophyte formation at C3-4  
15 and C4-5 without evidence of canal stenosis or neural foraminal  
16 narrowing, and nonspecific straightening of the normal cervical  
17 lordosis, possibly as a result of muscle strain, but no evidence  
18 of spondylolysis, spondylolisthesis, or signal abnormality. (AR  
19 278-80.) On the same day, Plaintiff also underwent an MRI of his  
20 right shoulder, which revealed a full focal thickness tear of the  
21 supraspinatus tendon at its insertion, acromioclavicular  
22 osteoarthritis, and bicipital tenosynovitis. (AR 275-77.)

23 On April 21, 2008, a lower-extremity electromyography  
24 suggested an active bilateral L5-S1 lumbar radiculopathy, the  
25 right greater than the left. (AR 283.) On the same day, a nerve  
26 conduction study showed reduced amplitude in the left lateral  
27 plantar motor, left medial plantar motor, right medial plantar  
28 motor, and right peroneal motor. (AR 285-92.) The peroneal

1 motor nerve also showed abnormal left-right amplitude  
2 differences, and the tibial H-reflex showed abnormal left-right  
3 latency differences. (Id.)

4 Between May 2008 and September 2010, Plaintiff visited  
5 chiropractor Bryan Aun, who was Plaintiff's "primary treating  
6 physician" for purposes of his workers' compensation case. (See  
7 AR 225.) Aun periodically examined Plaintiff, evaluated his work  
8 status, and referred Plaintiff to various doctors for  
9 consultation. (AR 225, 233-62, 464-560, 563-68.)

10 On June 4, 2008, Plaintiff visited orthopedist Kamran  
11 Aflatoon. (AR 294.) Dr. Aflatoon noted Plaintiff's complaints  
12 of "moderate" discomfort in his lower back and "very limited  
13 range of motion in the right shoulder." (Id.) Plaintiff stated  
14 that he was unable to do "overhead activities" but denied any  
15 pain or symptoms in other areas of the body. (AR 294-95.) Dr.  
16 Aflatoon noted that Plaintiff was in "no acute distress," had a  
17 "[n]ormal gait with no evidence of antalgia," had "[n]o evidence  
18 of foot drop," was "[a]ble to walk on tip toes and heels with  
19 some radiation of pain," and was "[a]ble to squat down without  
20 difficulty." (AR 296.) His range of motion in the lumbar spine  
21 was slightly below normal, he had tenderness and pain in some  
22 areas, and there was "loss of the normal lumbar lordosis," but  
23 "no visible deformity[] or step-off" existed and he had "no  
24 palpable abnormalities." (AR 297.) His range of motion in the  
25 right shoulder was below normal, but his range of motion in the  
26 left shoulder and in both elbows, wrists, and hands was normal.  
27 (AR 298.) Plaintiff's mental status was noted as normal. (AR  
28 299.) Dr. Aflatoon diagnosed Plaintiff with a tear in his right



1 rotator cuff and lumbar radiculopathy; he recommended  
2 arthroscopic surgery for Plaintiff's shoulder. (Id.)

3 On September 22, 2008, Plaintiff visited Dr. Suchandra  
4 Turner as part of his workers' compensation case. (AR 549.) Dr.  
5 Turner noted that Plaintiff's musculoskeletal examination was  
6 unchanged and that Plaintiff should continue on his current  
7 medications. (AR 549-50.)

8 On October 7, 2008, Plaintiff underwent an electromyography  
9 and nerve conduction study, which showed carpal tunnel syndrome,  
10 moderate on the right and severe on the left. (AR 545-47.)  
11 There was no evidence of cervical radiculopathy or any other  
12 peripheral nerve compression. (Id.)

13 On December 17, 2008, Plaintiff had x-rays taken of his  
14 cervical spine, hip, and pelvis, none of which showed any  
15 abnormalities. (AR 256-57.) An x-ray of his lumbar spine showed  
16 small degenerative anterior marginal spurs at the L4 and L5 level  
17 but no disc narrowing or signs of spondylolysis or  
18 spondylolisthesis. (AR 256.)

19 On February 23, 2009, Aun referred Plaintiff to workers'  
20 compensation Agreed Medical Examiner Dr. David Kim for  
21 evaluation. (AR 234-62.) Dr. Kim reviewed Plaintiff's medical  
22 records and noted Plaintiff's complaints of neck pain, right-  
23 shoulder pain, and low-back pain. (AR 234-52.) Plaintiff  
24 reported difficulty lifting, carrying, bending, twisting,  
25 pushing, pulling, reaching, kneeling, squatting, crawling, stair  
26 climbing, and walking and standing for "too long." (AR 253.) He  
27 also reported symptoms of depression and anxiety. (Id.) Dr.  
28 Kim's examination of Plaintiff's cervical spine and lumbar spine

1 showed normal results except for some tenderness to palpation.  
2 (AR 253-55.) Plaintiff's right shoulder had tenderness to  
3 palpation but was otherwise normal. (AR 254.) Plaintiff was  
4 able to walk normally and climbed onto the examination table  
5 without difficulty. (AR 256.) He showed no signs of muscle  
6 weakness, and his straight-leg raising was positive on the right  
7 but negative on the left. (Id.) X-rays of the lumbar spine  
8 showed only mild abnormalities. (AR 286-57.) Dr. Kim diagnosed  
9 Plaintiff with chronic cervical sprain or strain, right-shoulder  
10 strain, and lumbosacral sprain or strain. (AR 257.) Dr. Kim  
11 concluded that Plaintiff "in the future is precluded from heavy  
12 work activities" and could not return to his former job. (AR  
13 260-61.)

14 Between March 2009 and September 2010, Aun referred  
15 Plaintiff to Dr. Grant Williams for pain management in connection  
16 with his workers' compensation case. (AR 217-23, 338-463.)  
17 During each examination, Dr. Williams reported Plaintiff's  
18 subjective complaints and then performed a physical examination.  
19 (See id.) Dr. Williams diagnosed Plaintiff with a host of  
20 disorders, including displacement of cervical intervertebral  
21 discs without myelopathy at the C2-3 and C6-7 levels; brachial  
22 neuritis or radiculitis not otherwise specified; displacement of  
23 the lumbar intervertebral disc without myelopathy at the L3-4,  
24 L4-5, and L5-S1 levels; lumbosacral neuritis or radiculitis  
25 unspecified; rotator-cuff sprain and right-rotator-cuff tear;  
26 headache; abnormal weight gain; sexual dysfunction; dysthymic  
27 disorder/depression; insomnia; lumbosacral facet joint syndrome;  
28 cervical facet joint hypertrophy; and TMJ syndrome. (See AR 343,

1 358, 368, 378, 395, 407, 417, 421-22, 430, 444, 452-53, 460.)

2 Dr. Williams prescribed steroid injections and radiofrequency  
3 rhizotomy of the lumbar facet joints. (Id.)

4 On September 29, 2009, Dr. Williams filled out a Physical  
5 Capacities Evaluation form, in which he noted that Plaintiff  
6 could sit for only two hours and stand for only one hour in an  
7 eight-hour workday, could not walk at all, and needed to be in a  
8 horizontal position for the majority of the day. (AR 361.) He  
9 stated that Plaintiff could never lift or carry more than five  
10 pounds and could not grasp, push, pull, perform fine  
11 manipulation, or do repetitive movements at all on either the  
12 right or the left. (Id.) He also stated that Plaintiff could  
13 never bend, squat, crawl, climb, or reach, and he was completely  
14 restricted from unprotected heights, being around moving  
15 machinery, exposure to changes in temperature and humidity,  
16 driving automotive equipment, and exposure to pulmonary  
17 irritants. (Id.) He described Plaintiff's symptoms as "back  
18 pain, neck pain, right shoulder pain, headaches, [and] insomnia"  
19 and noted that test results and clinical findings showed  
20 herniated discs in the cervical and lumbar spine and a right-  
21 rotator-cuff tear. (AR 362.)

22 On September 5, 2009, state-agency physician Dr. R. Bitonte  
23 reviewed the evidence of record and concluded that Plaintiff  
24 could perform a range of light work with occasional postural  
25 activities and limited reaching, but he must avoid concentrated  
26 exposure to extreme cold, vibration, and hazards. (AR 227-29.)

27 On January 13, 2010, state-agency reviewing physician Dr. S. Lee  
28 reviewed the record and concurred with Dr. Bitonte that Plaintiff

1 could perform light work. (AR 263-64.)

2 On October 29, 2009, Aun referred Plaintiff to Dr. Sanjay  
3 Deshmukh for a consultation. (AR 469.) Dr. Deshmukh noted  
4 slightly lower grip strength in Plaintiff's right hand, slightly  
5 reduced abduction, flexion, and external rotation in his right  
6 shoulder, and reduced motion in the lumbar spine, but otherwise  
7 Plaintiff's examination results were grossly normal. (AR 472-  
8 77.)

9 On September 7, 2010, Dr. Williams evaluated Plaintiff after  
10 Plaintiff had received a series of three lumbar epidural steroid  
11 injections and undergone a successful percutaneous epidural  
12 decompression neuroplasty of the lumbosacral nerve roots with  
13 lumbar facet blocks. (AR 338-45, 395-99, 421-25.) Dr. Williams  
14 noted that Plaintiff had increased range of motion, restored  
15 ability to function in his lower back, and a 75 percent reduction  
16 in pain. (AR 340.)

17 On August 11, 2010, Aun reported that Plaintiff had a  
18 "chronic" condition preventing him from working and that he was  
19 not able to work. (AR 479.) Nonetheless, on September 29 and  
20 30, 2010, Aun reported that Plaintiff could return to "modified  
21 work" as of August 11, 2010, with the restrictions that he  
22 perform "[n]o very heavy work," "[n]o very repetitive overhead  
23 work," and "[n]o repetitive bending or stooping." (AR 465-66.)

24 On February 24, 2011, after the ALJ issued his unfavorable  
25 decision, Aun filled out a Physical Residual Functional Capacity  
26 Questionnaire, on which he stated that Plaintiff could not sit or  
27 stand for more than 15 minutes; needed to walk for two minutes  
28 every 15 minutes, change positions at will, and take unscheduled

1 breaks two or three times a week; could occasionally lift up to  
2 20 pounds; did not have any significant limitations in doing  
3 repetitive reaching, handling, or fingering; could bend and twist  
4 25 percent of the time; and would need to be absent from work  
5 more than three times a month. (AR 564-67.) He concluded by  
6 stating that Plaintiff was limited to "no very heavy work." (AR  
7 567.)

8       Chiropractor Aun also facilitated Plaintiff's mental-health  
9 evaluations as part of his workers' compensation case. On  
10 November 13, 2008, Aun referred Plaintiff to psychiatrist Dr.  
11 David Dye for a Psychological Consultation for Pain Management.<sup>4</sup>  
12 (AR 320.) Dr. Dye noted that Plaintiff complained of  
13 frustration, anxiety, and depression as a result of his "chronic"  
14 pain. (AR 322.) He noted that Plaintiff's appearance and  
15 behavior were appropriate and he responded well to questions.  
16 (AR 323.) Plaintiff appeared to be in "moderate" psychological  
17 distress, but his attention, concentration, memory, fund of  
18 information, abstracting ability, language skills, and cognitive  
19 processes were unimpaired, and his insight and judgment were  
20 "fair." (*Id.*) Dr. Dye performed a series of psychological  
21 tests, which showed moderate impairment. (AR 324-26.) Dr. Dye  
22 assessed Plaintiff's prognosis as "good" and noted that he had  
23 only "slight" to "moderate" impairments in work functions. (AR  
24 327-28.) Dr. Dye assigned Plaintiff a Global Assessment of

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27       <sup>4</sup> In his written decision, the ALJ incorrectly stated  
28 that Plaintiff's November 13, 2008 visit was with Dr. Bal Grewal,  
a colleague of Dr. Dye's who examined Plaintiff in November 2009.  
(AR 37, 301-02, 320.)

1 Functioning ("GAF")<sup>5</sup> score of 43. (AR 327, 329.)

2 On November 5, 2009, Aun referred Plaintiff to psychiatrist  
3 Dr. Bal Grewal for a Psychological Permanent and Stationary  
4 Evaluation in connection with his workers' compensation case.  
5 (AR 301-02.) Dr. Grewal noted that Plaintiff complained of  
6 "intense and constant" pain in his neck and right side and  
7 "emotional upset, including frustration, anxiety, and depression  
8 in reaction to chronic pain and limitations." (AR 303.) Dr.  
9 Grewal noted that Plaintiff's appearance and behavior were  
10 appropriate, he had no difficulty answering questions, and he was  
11 polite and responsive. (AR 304.) Plaintiff's "level of  
12 responsiveness did not show obvious effects of pain, medications,  
13 or drugs," and his "level of psychological distress appeared to  
14 be mild." (Id.) Plaintiff exhibited "slight" worry and  
15 uneasiness and "some" feelings of sadness. (Id.) He complained  
16 of "moderate" depression. (Id.) His attention and concentration  
17 were noted as "significantly impaired," his immediate memory  
18 showed "some deficits," and his intellectual ability was "low  
19 average," but there was no evidence of cognitive deficits, his  
20 fund of information was consistent with his background and  
21 intelligence level, his judgment was adequate, and his  
22 psychological functioning and adjustment appeared "fair." (Id.)

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24 <sup>5</sup> A GAF score represents a rating of overall  
25 psychological functioning on a scale of 0 to 100. See Am.  
26 Psychiatric Ass'n, Diagnostic and Statistical Manual of Disorders  
27 [hereinafter DSM-IV], Text Revision 34 (4th ed. 2000). A GAF  
28 score between 41 and 50 indicates "serious symptoms (e.g.,  
suicidal ideation, severe obsessional rituals, frequent  
shoplifting) OR any serious impairment in social, occupational,  
or school functioning (e.g., no friends, unable to keep a job)."  
Id.

1 Dr. Grewal performed a series of psychological tests, the results  
 2 of which showed mild to moderate impairment. (AR 306-10.) Dr.  
 3 Grewal assigned a GAF score of 63, indicating "mild-moderate  
 4 symptomatology."<sup>6</sup> (AR 312, 316.) Plaintiff was assessed as  
 5 having "no impairment" to "moderate impairment" in activities of  
 6 daily living; social functioning; concentration, persistence, and  
 7 pace; and adaptation and decompensation in work or worklike  
 8 settings. (AR 315-16.) Dr. Grewal noted that Plaintiff's  
 9 psychiatric symptoms had responded well to treatment.<sup>7</sup> (AR 317-  
 10 18.) He concluded that Plaintiff was "permanent and stationary"<sup>8</sup>  
 11 and was "not able to work in his usual and customary occupation"  
 12 because of "[c]hronic pain, functional limitations, depression,  
 13 anxiety, and physical difficulties." (AR 318.)

#### 14 VI. DISCUSSION

15 Plaintiff alleges that the ALJ erred in the following ways:  
 16 (1) evaluating Plaintiff's credibility; (2) determining  
 17 Plaintiff's RFC; (3) evaluating the medical evidence of record;

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18  
 19 <sup>6</sup> A GAF score between 60 and 70 indicates "some mild  
 20 symptoms (e.g. depressed mood and mild insomnia) OR some  
 21 difficulty in social, occupational, or school functioning . . .  
 but generally functioning pretty well, has some meaningful  
 interpersonal relationships." DSM-IV at Text Revision 34.

22 <sup>7</sup> As the ALJ noted, however (AR 37), the record contains  
 23 no evidence that Plaintiff ever was prescribed or received any  
 24 psychiatric treatment, not even medications for depression.  
 25 Indeed, in his own report Dr. Grewal noted that Plaintiff  
 acknowledged that the only even quasi-psychiatric treatment he  
 received related to pain management. (AR 311.)

26 <sup>8</sup> "Permanent and stationary" means that Plaintiff's  
 27 "medical condition [had] reached the maximum medical improvement  
 and [was] unlikely to change." Hernandez v. Colvin, No. CV 12-  
 28 3320-SP, 2013 WL 1245978, at \*9 n.8 (C.D. Cal. Mar. 25, 2013)  
 (citing 8 Cal. Code Regs. § 10152).

1 and (4) formulating the hypothetical to the VE and relying on the  
 2 VE's testimony to conclude that a significant number of jobs  
 3 existed in the economy that Plaintiff could perform. (J. Stip.  
 4 at 3.) None of these contentions warrant reversal.<sup>9</sup>

5 A. The ALJ Properly Evaluated the Medical Evidence

6 Plaintiff claims that the ALJ erred in (1) rejecting Dr.  
 7 Williams's and Aun's opinions and (2) failing to consider all of  
 8 his physical and mental impairments, either individually or in  
 9 combination. (J. Stip. at 23-31, 36-37.) These contentions do  
 10 not warrant reversal.

11 1. The ALJ did not err in considering Aun's and Dr.  
 12 Williams's opinions

13 Plaintiff contends that the ALJ erred in failing to properly  
 14 consider Aun's and Dr. Williams's opinions. To the extent the  
 15 ALJ rejected those opinions, he provided specific and legitimate  
 16 reasons for doing so that were supported by substantial evidence.  
 17 Accordingly, he did not err.

18 a. *Applicable law*

19 Three types of physicians may offer opinions in Social  
 20 Security cases: (1) those who directly treated the Plaintiff, (2)  
 21 those who examined but did not treat the Plaintiff, and (3) those  
 22 who did not directly treat or examine the Plaintiff. Lester, 81  
 23 F.3d at 830. A treating physician's opinion is generally  
 24 entitled to more weight than that of an examining physician, and  
 25 an examining physician's opinion is generally entitled to more  
 26

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27 <sup>9</sup> The Court has rearranged the order in which it  
 28 addresses Plaintiff's claims from that followed by the parties,  
 to avoid repetition and for other reasons.



1 weight than that of a nonexamining physician. Id. When a  
2 treating physician's opinion is not contradicted by another  
3 physician, it may be rejected only for "clear and convincing"  
4 reasons. Carmickle v. Comm'r Soc. Sec. Admin., 533 F.3d 1155,  
5 1164 (9th Cir. 2008) (quoting Lester, 81 F.3d at 830-31). When a  
6 treating physician's opinion conflicts with another doctor's,  
7 however, the ALJ must provide only "specific and legitimate  
8 reasons" for discounting the treating physician's opinion. Id.  
9 A treating physician is a claimant's own physician who has  
10 provided or continues to provide him with medical treatment or  
11 evaluation in an ongoing treatment relationship. See Benton ex  
12 rel. Benton v. Barnhart, 331 F.3d 1030, 1035 (9th Cir. 2003);  
13 § 404.1502.

14 In determining disability, the ALJ "must develop the record  
15 and interpret the medical evidence" but need not discuss "every  
16 piece of evidence in the record." Howard, 341 F.3d at 1012. The  
17 ALJ is responsible for resolving conflicts in the medical  
18 evidence. Carmickle, 533 F.3d at 1164.

19 An ALJ may not disregard a physician's medical opinion  
20 simply because it was initially procured in the context of a  
21 state workers' compensation claim or framed in the terminology of  
22 such proceedings. Booth v. Barnhart, 181 F. Supp. 2d 1099, 1105  
23 (C.D. Cal. 2002). "The ALJ must 'translate' terms of art  
24 contained in such medical opinions into the corresponding Social  
25 Security terminology in order to accurately assess the  
26 implications of those opinions for the Social Security disability  
27 determination." Id. at 1106.

1                   b.     *Discussion*

2           The ALJ gave "little weight" to Aun's August 11, 2010  
3 opinion<sup>10</sup> that Plaintiff was unable to return to work because (1)  
4 it was inconsistent with his September 29, 2010 opinion that  
5 Plaintiff could return to work as of August 11, 2010, with some  
6 limitations; (2) it was not supported by objective evidence; (3)  
7 it conflicted with Plaintiff's daily activities; and (4) Aun was  
8 a chiropractor and thus did not qualify as an acceptable medical  
9 source. (AR 38.) He also gave "little weight" to Dr. Williams's  
10 September 2009 RFC assessment and his "multiple diagnoses" of  
11 additional impairments because they were based on Plaintiff's  
12 discredited subjective complaints, not supported by objective  
13 evidence, and inconsistent with Plaintiff's daily activities and  
14 other evidence in the record. (AR 36, 38.) The ALJ's analysis  
15 was proper.

16           Initially, the ALJ correctly gave "little weight" to Aun's  
17 conclusion that Plaintiff could not work in part because Aun was  
18 not an acceptable medical source. See (AR 38); § 404.1513(a) &  
19 (d); Gomez v. Chater, 74 F.3d 967, 970-71 (9th Cir. 1996)  
20 (opinions from "other sources" given less weight than "acceptable  
21 medical sources"); Bunnell v. Sullivan, 912 F.3d 1149, 1152 (9th  
22 Cir. 1990) ("Although a claimant is free to offer chiropractic  
23 evidence to help the Secretary understand his inability to work,  
24 . . . there is no requirement that the Secretary accept or  
25

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26           <sup>10</sup> The ALJ stated that Aun opined Plaintiff could not work  
27 on October 10, 2010. (AR 38.) In fact, the opinion the ALJ  
28 referenced appears to be dated August 11, 2010, though it notes  
that Plaintiff was due for a follow-up appointment on October 10.  
(See AR 478.)

1 specifically refute such evidence."), superseded on other grounds  
2 by 947 F.2d 341 (9th Cir. 1991) (en banc); Kottke v. Astrue, No.  
3 CV 07-05618-VBK, 2008 U.S. Dist. LEXIS 73329, at \*13 (C.D. Cal.  
4 Aug. 1, 2008) (holding that "ALJ was not bound to accept a  
5 residual functional capacity assessment rendered by a  
6 chiropractor based on his own diagnosis" because "[t]o do so  
7 would blur the line between the type of evidence which may be  
8 considered from acceptable medical sources, as against evidence  
9 from other sources").

10 The ALJ also properly rejected Aun's and Dr. Williams's  
11 opinions to the extent they were not supported by their own  
12 clinical findings and conflicted with the other evidence of  
13 record. See § 404.1527(d)(4) (explaining that more weight should  
14 be afforded to medical opinions that are consistent with the  
15 record as a whole). As the ALJ correctly noted, in September  
16 2009, Aun found that Plaintiff was capable of working with  
17 certain restrictions that essentially corresponded to the ALJ's  
18 restriction to light work. (AR 38, 465-66.) His previous  
19 opinions that Plaintiff could not work, rendered close in time to  
20 the September 2009 opinion, appeared to be based on a finding  
21 that Plaintiff should remain off work in order to undergo  
22 surgery; once surgery was off the table, it appears that Aun  
23 found Plaintiff could go back to work as long as he was limited  
24 to essentially light work. (AR 38, 40, 465-66, 479.) Moreover,  
25 as the ALJ pointed out, nearly all the objective evidence in the  
26 record, including the reports of Drs. Kim, Aflatoon, Turner,  
27 Deshmukh, Bitonte, and Lee, supported the ALJ's conclusion that  
28 Plaintiff had impairments in his back and shoulder but was not

1 completely precluded from working. (AR 39-40, 227-29, 234-62,  
2 263-64, 294-99, 469-77, 549-50.) Even Dr. Williams noted that  
3 Plaintiff's symptoms improved significantly after he underwent  
4 epidural injections. (AR 340.) The ALJ therefore properly  
5 concluded that Dr. Williams's highly restrictive RFC finding,  
6 rendered on a check-box form and unsupported by objective  
7 clinical findings, was entitled to little weight. (AR 38); see  
8 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1194-95 (9th  
9 Cir. 2004) (holding that treating physicians' conflicting,  
10 checklist-form opinions were entitled to minimal weight). For  
11 the same reason, Aun's RFC finding, submitted to the Appeals  
12 Council after the ALJ's decision, does not mandate reversal. (AR  
13 563-67.) Indeed, it is at least somewhat consistent with the  
14 ALJ's RFC finding, as Aun apparently concluded that Plaintiff was  
15 limited only to "no very heavy work." (AR 567.)

16 The ALJ also properly rejected Dr. Williams's diagnoses of  
17 additional impairments such as cephalgia, cervical radiculitis,  
18 brachial neuritis, sexual dysfunction, insomnia, and TMJ syndrome  
19 because they were not supported by any evidence in the record.  
20 (AR 36.)<sup>11</sup> As the ALJ noted, the record showed that Plaintiff  
21 received no treatment for any of those diagnoses even though he  
22 had medical insurance and received regular treatment for his  
23 other impairments. (AR 36; see AR 60 (Plaintiff discussing his  
24 medical coverage).) No other doctor to examine Plaintiff

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25  
26 <sup>11</sup> Dr. Williams opined that as a result of all of  
27 Plaintiff's alleged impairments, he was "totally restricted" from  
28 driving a car. (AR 361.) He apparently was not aware that by  
Plaintiff's own testimony, he spent almost all day driving four  
of his five children to and from school. (AR 67-69.)

1 diagnosed any of those impairments. (See AR 234-62, 294-99, 469-  
2 77, 549-50.) Indeed, Dr. Williams's and Aun's RFC findings for  
3 Plaintiff were inconsistent with each other: Dr. Williams said  
4 that Plaintiff could occasionally lift only up to five pounds and  
5 could never use either of his hands for "simple grasping,"  
6 pushing, pulling, or fine manipulation (AR 361), whereas Aun said  
7 that Plaintiff could occasionally lift up to 20 pounds and had no  
8 limitations in doing repetitive reaching, handling, or fingering  
9 or in grasping, turning, or twisting objects, performing fine  
10 manipulations, or overhead reaching on either side (AR 566).  
11 Moreover, Dr. Williams was not a mental-health specialist, and  
12 thus the ALJ properly gave his additional diagnosis of depression  
13 little weight. (AR 36); see § 404.1527(d)(5); Holohan v.  
14 Massanari, 246 F.3d 1195, 1203 n.2 (9th Cir. 2001) (physician's  
15 opinion may be "entitled to little if any weight" if physician  
16 "offers an opinion on a matter not related to her . . . area of  
17 specialization").

18 Further, the ALJ properly rejected Aun's and Dr. Williams's  
19 opinions to the extent they were based on Plaintiff's discredited  
20 subjective complaints. As discussed more fully in Section VI.C  
21 below, the ALJ's rejection of Plaintiff's subjective testimony  
22 was proper. As the ALJ pointed out, Dr. Williams "seemed to  
23 accept uncritically as true most, if not all, of what the  
24 claimant reported." (AR 36; see generally AR 338-459.) To the  
25 extent Aun and Dr. Williams relied on Plaintiff's discredited  
26 subjective complaints, the ALJ was entitled to disregard their  
27 opinions. See Andrews v. Shalala, 53 F.3d 1035, 1043 (9th Cir.  
28 1995) ("[A]n opinion of disability premised to a large extent

1 upon the claimant's own accounts of his symptoms and limitations  
2 may be disregarded, once those complaints have themselves been  
3 properly discounted." ).

4 The ALJ was also entitled to adopt the opinions of reviewing  
5 physicians Bitonte and Lee over those of Aun and Williams. (AR  
6 39); see Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)  
7 ("[O]pinions of non-treating or non-examining physicians may . .  
8 . serve as substantial evidence when . . . consistent with  
9 independent clinical findings or other evidence in the record." ).  
10 As the ALJ found, their opinions were consistent with Dr.  
11 Deshmukh's examination showing essentially normal results and Dr.  
12 Kim's findings that Plaintiff had sprains or strains in his right  
13 shoulder and spine but was otherwise unimpaired and could do less  
14 than heavy work. (AR 37, 39-40.) As noted, Dr. Williams's and  
15 Aun's findings were largely inconsistent with each other. In any  
16 event, any conflict in the properly supported medical-opinion  
17 evidence was the "sole province of the ALJ to resolve." Andrews,  
18 53 F.3d at 1041. Indeed, the ALJ gave Plaintiff the benefit of  
19 the doubt in concluding that he was capable of light work rather  
20 than adopting Dr. Kim's finding that he could perform less than  
21 heavy work. (See AR 40.)

22 The ALJ also was entitled to reject Aun's and Dr. Williams's  
23 opinions on Plaintiff's ability to return to work to the extent  
24 they were conclusions about Plaintiff's disability for workers'  
25 compensation purposes. See Coria v. Heckler, 750 F.2d 245, 247-  
26 48 (3d Cir. 1984) (explaining that because of differences in the  
27 definition of "disability" in the state workers' compensation and  
28 Social Security contexts, "the ALJ could reasonably disregard so

1 much of the physicians' reports as set forth their conclusions as  
2 to [plaintiff's] disability for workers' compensation purposes,"  
3 but objective medical evidence in reports elicited for workers'  
4 compensation should be evaluated by same standards as medical  
5 evidence in Social Security reports). Moreover, the ALJ was  
6 entitled to disregard Aun's and Dr. Williams's opinions to the  
7 extent they were opinions on Plaintiff's ultimate disability  
8 status, which the ALJ was not obligated to accept. See  
9 § 404.1527(d)(1) ("A statement by a medical source that you are  
10 'disabled' or 'unable to work' does not mean that we will  
11 determine that you are disabled."); SSR 96-5p, 1996 WL 374183, at  
12 \*5 (explaining that treating-source opinions that a person is  
13 disabled or unable to work "can never be entitled to controlling  
14 weight or given special significance"). Reversal is not  
15 warranted on this basis.

16 2. The ALJ did not err in his consideration of  
17 Plaintiff's other impairments

18 Plaintiff contends that the ALJ erred at step two by failing  
19 to consider as severe Plaintiff's depression and the additional  
20 physical impairments diagnosed by Dr. Williams. (J. Stip. at 24-  
21 28.) Reversal is not warranted on this basis because substantial  
22 evidence in the record supports the ALJ's step-two determination.

23 At step two of the sequential evaluation process, a  
24 plaintiff has the burden to present evidence of medical signs,  
25 symptoms, and laboratory findings that establish a severe  
26 medically determinable physical or mental impairment that can be  
27 expected to result in death or last for a continuous period of at  
28 least 12 months. Ukolov v. Barnhart, 420 F.3d 1002, 1004-05 (9th

1 Cir. 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));<sup>12</sup> see  
2 20 C.F.R. §§ 404.1520, 404.1509. Substantial evidence supports  
3 an ALJ's determination at step two that a claimant was not  
4 disabled when "there are no medical signs or laboratory findings  
5 to substantiate the existence of a medically determinable  
6 physical or mental impairment." Ukolov, 420 F.3d at 1004-05  
7 (citing SSR 96-4p). An impairment may never be found on the  
8 basis of the claimant's subjective symptoms alone. Id. at 1005.

9 Step two is "a de minimis screening device [used] to dispose  
10 of groundless claims." Smolen, 80 F.3d at 1290. Applying the  
11 applicable standard of review to the requirements of step two, a  
12 court must determine whether an ALJ had substantial evidence to  
13 find that the medical evidence clearly established the claimant  
14 did not have a medically severe impairment or combination of  
15 impairments. Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir.  
16 2005); see also Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir.  
17 1988) ("Despite the deference usually accorded to the Secretary's  
18 application of regulations, numerous appellate courts have  
19 imposed a narrow construction upon the severity regulation  
20 applied here."). An impairment or combination of impairments is  
21 "not severe" if the evidence established only a slight  
22 abnormality that had "no more than a minimal effect on an  
23 individual's ability to work." Webb, 433 F.3d at 686 (citation  
24 omitted).

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25  
26  
27 <sup>12</sup> A "medical sign" is "an anatomical, physiological, or  
28 psychological abnormality that can be shown by medically  
acceptable clinical diagnostic techniques." Ukolov, 420 F.3d at  
1005.



1 Plaintiff failed to meet his burden to present evidence of  
2 medical signs, symptoms, and laboratory findings establishing  
3 that his alleged depression constituted a medically determinable  
4 mental impairment. See § 404.1508 ("A physical or mental  
5 impairment must be established by medical evidence consisting of  
6 signs, symptoms, and laboratory findings, not only by your  
7 statement of symptoms."). The ALJ was entitled to reject the GAF  
8 score of 43 because it was inconsistent with the other evidence  
9 in the record - including a later GAF score of 63 - showing that  
10 Plaintiff's depression was not significantly limiting (AR 38,  
11 40); in any event, GAF scores "[do] not have a direct correlation  
12 to the severity requirements in the Social Security  
13 Administration's mental disorders listings," and an ALJ may  
14 properly disregard a low GAF score if other substantial evidence  
15 supports a finding that the claimant was not disabled. See Doney  
16 v. Astrue, 485 F. App'x 163, 165 (9th Cir. 2012) (alterations and  
17 citations omitted). Other than the one low GAF score, Dr.  
18 Grewal's and Dr. Dye's evaluations generally supported the ALJ's  
19 determination that Plaintiff's depression was not severe. For  
20 example, Dr. Dye found that Plaintiff was alert and responded  
21 well to questioning, his cognitive processes were not impaired,  
22 he had a "good" prognosis and responded well to medications, and  
23 he had only "slight" to "moderate" impairment in his ability to  
24 perform work functions. (AR 323-28.) Dr. Grewal similarly found  
25 that Plaintiff's symptoms were "mild" to "moderate," he responded  
26 well to treatment for his pain, and he appeared to be in only  
27 "mild" distress. (AR 304, 315-18.) To the extent Dr. Grewal  
28 suggested that Plaintiff's depression limited his ability to work

1 (see AR 318), the ALJ properly rejected that portion of the  
2 opinion because it relied heavily on Plaintiff's discredited  
3 subjective complaints (AR 40). See Andrews, 53 F.3d at 1043  
4 ("[A]n opinion of disability premised to a large extent upon the  
5 claimant's own accounts of his symptoms and limitations may be  
6 disregarded, once those complaints have themselves been properly  
7 discounted."). Moreover, Dr. Grewal's opinion evaluated only  
8 Plaintiff's ability to return to his former job, which the ALJ  
9 agreed he could not do. (See AR 41, 318.)

10 Apart from Dr. Grewal's and Dr. Dye's evaluations obtained  
11 for the purposes of Plaintiff's workers' compensation case, the  
12 record is devoid of any mental-health treatment notes or  
13 functional limitations opined by any mental-health professional  
14 resulting from Plaintiff's alleged depression. To the extent Dr.  
15 Williams also opined that Plaintiff's depression affected his  
16 ability to work, the ALJ properly rejected that opinion because  
17 Dr. Williams was not a mental-health professional and his opinion  
18 was not supported by any medical findings. (AR 36); see  
19 § 404.1527(d)(5); Holohan, 246 F.3d at 1203 n.2. Even if  
20 Plaintiff did suffer from depression, the ALJ was entitled to  
21 infer that any symptoms were adequately controlled with  
22 Plaintiff's pain medication. See § 404.1529(c)(3)(iv) (ALJ may  
23 consider effectiveness of medication in evaluating severity and  
24 limiting effects of impairment); Warre v. Comm'r of Soc. Sec.  
25 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that  
26 can be controlled effectively with medication are not disabling  
27 for the purpose of determining eligibility for [Social Security]  
28 benefits."). Further, Plaintiff testified that the only

1 impairments affecting his ability to work were related to his  
2 back and shoulder; he never mentioned any symptoms resulting from  
3 depression or any other impairments. (AR 54-70; see also AR  
4 151.) Accordingly, substantial evidence supports the ALJ's  
5 determination that Plaintiff's depression did not constitute a  
6 medically determinable impairment. (AR 39); see Ukolov, 420 F.3d  
7 at 1004-05.

8 Plaintiff also argues that the ALJ failed to address his  
9 impairments of leg and foot pain, sexual dysfunction, headaches,  
10 and insomnia as diagnosed by Dr. Williams, either individually or  
11 in combination. (J. Stip. at 24-27.) Even assuming sufficient  
12 evidence in the record showed that Plaintiff suffered from these  
13 impairments, but see supra Section VI.A.1, these conditions did  
14 not constitute severe impairments if they did not prevent  
15 Plaintiff from working. See § 404.1520(c) (severe impairment is  
16 one that "significantly limits [claimant's] physical or mental  
17 ability to do basic work activities"). Substantial evidence  
18 supports the ALJ's finding that these impairments were not severe  
19 because no doctor other than Dr. Williams diagnosed them, and  
20 other than his taking medication for insomnia, which appeared to  
21 control it (AR 219), there was no record of his receiving  
22 treatment for any of the alleged impairments even though he had  
23 insurance and received regular medical treatment for his other  
24 impairments (AR 36, 60). See Houghton v. Comm'r, Soc. Sec.  
25 Admin., 493 F. App'x 843, 845-46 (9th Cir. 2012) (holding that  
26 ALJ "was not required to discuss" plaintiff's alleged limitations  
27 "arising from depression, a heart condition, sleep apnea, a right  
28 heel injury, diabetes with neuropathy in the right leg, or

1 obesity" "in the absence of significant probative evidence that  
2 they had some functional impact on [plaintiff's] ability to  
3 work").

4 To the extent Plaintiff claims the ALJ should have discussed  
5 at step three the combined effect of his impairments (see J.  
6 Stip. at 28-29), the ALJ "is not required to discuss the combined  
7 effects of a claimant's impairments or compare them to any  
8 listing in an equivalency determination, unless the claimant  
9 presents evidence in an effort to establish equivalence." Burch  
10 v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005) (citing Lewis v.  
11 Apfel, 236 F.3d 503, 514 (9th Cir. 2001)). Here, Plaintiff and  
12 his counsel never asked the ALJ to consider any particular  
13 Listings, and Plaintiff has failed to point to any credited  
14 evidence of functional limitations that would have affected the  
15 ALJ's analysis, nor has he offered any plausible theory of how  
16 the combination of his impairments equaled a Listing. The ALJ  
17 therefore did not commit reversible error by failing to make  
18 additional findings at step three.

19 B. The ALJ Properly Assessed Plaintiff's RFC and Found  
20 that a Significant Number of Jobs Existed that  
21 Plaintiff Could Perform

22 Plaintiff argues that the ALJ did not properly evaluate his  
23 RFC. (J. Stip. at 16-21, 22-23.) Similarly, he argues that the  
24 ALJ erred in determining that Plaintiff could perform a  
25 significant number of jobs in the economy. (J. Stip. at 37-39,  
26 40.) The essence of Plaintiff's arguments appears to be that in  
27 determining Plaintiff's RFC, the ALJ should have accounted for  
28 additional impairments, including depression and Dr. Williams's

1 various diagnoses, as well as Aun's and Dr. Williams's more  
2 severe functional restrictions. As discussed above in Section  
3 VI.A, however, the ALJ properly rejected that evidence. Thus,  
4 his RFC finding, which accounted for all the impairments he  
5 determined were properly supported by the medical evidence, was  
6 proper. See Osenbrock v. Apfel, 240 F.3d 1157, 1164-65 (9th Cir.  
7 2001) ("Nor was the ALJ bound to accept as true the restrictions  
8 set forth in the second hypothetical question if they were not  
9 supported by substantial evidence. An ALJ is free to accept or  
10 reject restrictions in a hypothetical question that are not  
11 supported by substantial evidence."); Rollins, 261 F.3d at 857  
12 ("[B]ecause the ALJ included all of the limitations that he found  
13 to exist, and because his findings were supported by substantial  
14 evidence, the ALJ did not err in omitting the other limitations  
15 that Rollins had claimed, but had failed to prove."). The VE  
16 testified that an individual with Plaintiff's limited English  
17 skills who was capable of light work but who could do "[n]o work  
18 above the right shoulder" and "[s]hould avoid concentrated  
19 exposure to extreme cold, vibration, and hazards" could not  
20 perform Plaintiff's past work but could perform such jobs as  
21 production assembler, cook helper, and housekeeping cleaner. (AR  
22 73-74.) The ALJ was entitled to credit that testimony. See  
23 Massachi v. Astrue, 486 F.3d 1149, 1153 (9th Cir. 2007).

24 Because the ALJ's RFC assessment was supported by  
25 substantial evidence and he properly relied on the VE's testimony  
26 in finding that a significant number of jobs existed that  
27 Plaintiff could perform, Plaintiff is not entitled to reversal on  
28 these claims.

1 C. The ALJ Properly Assessed Plaintiff's Credibility

2 Plaintiff argues that the ALJ failed to provide clear and  
3 convincing reasons for discounting his credibility. (J. Stip. at  
4 3-11, 14-16.) Because the ALJ did provide clear and convincing  
5 reasons supporting his evaluation of Plaintiff's testimony and  
6 those reasons were supported by substantial evidence in the  
7 record, reversal is not warranted on this basis.

8 1. Applicable law

9 An ALJ's assessment of pain severity and claimant  
10 credibility is entitled to "great weight." See Weetman v.  
11 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779  
12 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to  
13 believe every allegation of disabling pain, or else disability  
14 benefits would be available for the asking, a result plainly  
15 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674  
16 F.3d 1104, 1122 (9th Cir. 2012). In evaluating a claimant's  
17 subjective symptom testimony, the ALJ engages in a two-step  
18 analysis. See Lingenfelter, 504 F.3d at 1035-36. "First, the  
19 ALJ must determine whether the claimant has presented objective  
20 medical evidence of an underlying impairment [that] could  
21 reasonably be expected to produce the pain or other symptoms  
22 alleged." Id. at 1036 (internal quotation marks omitted). If  
23 such objective medical evidence exists, the ALJ may not reject a  
24 claimant's testimony "simply because there is no showing that the  
25 impairment can reasonably produce the degree of symptom alleged."  
26 Smolen, 80 F.3d at 1282 (emphasis in original). When the ALJ  
27 finds a claimant's subjective complaints not credible, the ALJ  
28 must make specific findings that support the conclusion. See

1 Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent  
2 affirmative evidence of malingering, those findings must provide  
3 "clear and convincing" reasons for rejecting the claimant's  
4 testimony. Lester, 81 F.3d at 834. If the ALJ's credibility  
5 finding is supported by substantial evidence in the record, the  
6 reviewing court "may not engage in second-guessing." Thomas, 278  
7 F.3d at 959.

8 2. Background

9 Plaintiff claimed in his Disability Report that his ability  
10 to work was limited in the following ways: "No lifting over 10  
11 lbs, loss of memory, no prolonged[] standing, sitting, walking,"  
12 "[u]nable to look over right side," and "[n]umbness in right  
13 hand." (AR 151.) At the hearing, Plaintiff testified that he  
14 stopped working on December 22, 2006, because his "company  
15 closed." (AR 54.) As to his impairments, he stated that he was  
16 unable to sit or stand "for very long" and could not be "bent  
17 over very, very much," "go up stairs," or "twist." (AR 58.) He  
18 stated that he could stand for about 10 minutes before needing to  
19 sit down and could not sit through an entire TV show without  
20 having to lie flat on his back and rest. (AR 58-59.) He  
21 testified that a problem with the discs in his middle to lower  
22 back caused a pulsating pain in his back. (AR 61-62.) He stated  
23 that he occasionally used medication and creams for the pain,  
24 which helped, but mostly he lied down to ease the pain. (AR 62-  
25 63.) He stated that he needed to rest for 10 to 15 minutes  
26 "throughout the day" and had to wake up every 20 to 25 minutes at  
27 night to change positions. (AR 63-64.)

28 As to his daily activities, Plaintiff testified that he  
lived with his wife and five children and was the only person in

1 the household who drove. (AR 67-68.) He drove his wife to go  
2 grocery shopping and run errands and drove four of his five kids  
3 to school and back; he essentially spent the entire day driving  
4 his wife and kids back and forth. (AR 67-69.) He also attended  
5 church on Sundays, cooked for himself, helped his children with  
6 homework, and "sometimes" tried to do yard work, but it was  
7 difficult because of his back pain. (AR 68-69.)

8           3.    Discussion

9           The ALJ evaluated Plaintiff's credibility as follows:  
10          Despite his alleged impairments and difficulties, the  
11          claimant has engaged in a somewhat normal level of daily  
12          activity and interaction. The claimant testified he  
13          lives with his wife and five minor children. As the only  
14          driver in his household, the claimant testified that he  
15          drives his children to and from school and drives his  
16          wife grocery shopping. The claimant admitted that he  
17          helps [with] household chores, cooks, helps his kids with  
18          their homework and attends church on Sundays.

19          Some of the physical and mental abilities and social  
20          interactions required in order to perform these  
21          activities are the same as those necessary for obtaining  
22          and maintaining employment. The claimant's ability to  
23          participate in such activities undermined the credibility  
24          of the claimant's allegations of disabling functional  
25          limitations.

26          . . . .

27          The claimant reports taking muscle relaxers, anti-  
28          inflammatory, pain medications and sleep aids [(AR 154,  
184, 188)]. The claimant told his treating physician



1 that his prescribed medications have caused his stomach  
2 to hurt. However, on November 13, 2008 and November 5,  
3 2009, the claimant told his workers' compensation  
4 psychologist that his pain medications were working and  
5 he reported no side effects. The claimant's  
6 inconsistency in reporting side effects to medications  
7 reduces his credibility regarding these complaints.

8 The claimant's testimony and statements of record  
9 are only credible to the extent the claimant can do the  
10 work described herein. The claimant's credibility  
11 regarding the severity of his symptoms is diminished  
12 because those allegations are greater than expected in  
13 light of the objective evidence of record.

14 (AR 34-35.)

15 Reversal is not warranted based on the ALJ's alleged failure  
16 to make proper credibility findings or properly consider  
17 Plaintiff's subjective symptoms. To the extent the ALJ rejected  
18 Plaintiff's allegations, he provided clear and convincing reasons  
19 for doing so. As the ALJ noted, Plaintiff responded well to  
20 treatment and did not appear to seek any additional treatment  
21 outside that provided in connection with his workers'  
22 compensation case even though he had insurance. (AR 34-36); see  
23 Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (ALJ may rely on  
24 "unexplained, or inadequately explained, failure to seek  
25 treatment" in rejecting claimant's credibility); Tommasetti v.  
26 Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (ALJ may infer that  
27 claimant's "response to conservative treatment undermines  
28 [claimant's] reports regarding the disabling nature of his  
pain"). Plaintiff also made inconsistent statements about the

1 side effects caused by his medications, which was a proper basis  
2 for the ALJ to reject his credibility. (AR 34); see Burch, 400  
3 F.3d at 680 (in determining credibility, ALJ "may engage in  
4 ordinary techniques of credibility evaluation"). Moreover,  
5 Plaintiff admitted at the hearing that he initially stopped  
6 working because he was laid off, not because he was injured. (AR  
7 54); see Bruton v. Massanari, 268 F.3d 824, 826 (9th Cir. 2001)  
8 (holding that ALJ properly considered fact that claimant stopped  
9 working because he was laid off, not because of medical  
10 disability). Plaintiff's testimony also conflicted with the  
11 medical evidence of record, which showed that Plaintiff's  
12 impairments had only mild to moderate effects on his ability to  
13 function. (AR 34-36.) Even though Plaintiff allegedly injured  
14 himself in June 2006, the record contains no evidence of his  
15 having visited any doctor until March 2007, after he was laid off  
16 and then filed a workers' compensation claim. (See AR 236, 250.)  
17 The ALJ was entitled to discount Plaintiff's subjective testimony  
18 to the extent it conflicted with the medical record. See  
19 Carmickle, 533 F.3d at 1161 ("Contradiction with the medical  
20 record is a sufficient basis for rejecting the claimant's  
21 subjective testimony."); Lingenfelter, 504 F.3d at 1040 (in  
22 determining credibility, ALJ may consider "whether the alleged  
23 symptoms are consistent with the medical evidence"); Burch, 400  
24 F.3d at 681 ("Although lack of medical evidence cannot form the  
25 sole basis for discounting pain testimony, it is a factor that  
26 the ALJ can consider in his credibility analysis."); Kennelly v.  
27 Astrue, 313 F. App'x 977, 979 (9th Cir. 2009) (same).

28 Moreover, as the ALJ noted, Plaintiff admitted that he was  
able to do a wide variety of daily activities, including

1 extensive driving, taking care of his five children, cooking,  
2 doing household chores, and regularly attending church. (AR 67-  
3 69, 34-35.) That Plaintiff's allegations of disabling pain were  
4 inconsistent with his daily activities was a valid reason for the  
5 ALJ to discount his testimony. See Bray v. Comm'r of Soc. Sec.  
6 Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (ALJ properly  
7 discounted claimant's testimony because "she leads an active  
8 lifestyle, including cleaning, cooking, walking her dogs, and  
9 driving to appointments"); Molina, 674 F.3d at 1113 ("Even where  
10 [claimant's] activities suggest some difficulty functioning, they  
11 may be grounds for discrediting the claimant's testimony to the  
12 extent that they contradict claims of a totally debilitating  
13 impairment.").


14 To the extent the ALJ found Plaintiff's statements were not  
15 credible because he received only conservative treatment for his  
16 impairments, "limited to prescription pain medication, over the  
17 counter medications, steroid injections, a home exercise program,  
18 acupuncture, chiropractic visits, activity modification and  
19 physical therapy" (AR 35), that reasoning might not have been  
20 clear and convincing because epidural and steroid injections may  
21 not be consistent with a finding of conservative treatment. See  
22 Tagle v. Astrue, No. CV-11-7093-SP, 2012 WL 4364242, at \*4 (C.D.  
23 Cal. Sept. 21, 2012) ("While physical therapy and pain medication  
24 are conservative, epidural and trigger point injections are  
25 not."); Christie v. Astrue, No. CV 10-3448-PJW, 2011 WL 4368189,  
26 at \*4 (C.D. Cal. Sept. 16, 2011) (refusing to characterize  
27 steroid, trigger-point, and epidural injections as conservative).  
28 Despite that potential error, however, remand is not required  
because the remainder of the ALJ's credibility findings were

1 supported by substantial evidence in the record. See Carmickle,  
2 533 F.3d at 1162; Batson, 359 F.3d at 1190, 1197. This Court may  
3 not "second-guess" the ALJ's credibility finding simply because  
4 the evidence may have been susceptible of other interpretations  
5 more favorable to Plaintiff. See Tommasetti, 533 F.3d at 1039.  
6 Reversal is therefore not warranted on this basis.

7 **VII. CONCLUSION**

8 Consistent with the foregoing, and pursuant to sentence four  
9 of 42 U.S.C. § 405(g),<sup>13</sup> IT IS ORDERED that judgment be entered  
10 AFFIRMING the decision of the Commissioner and dismissing this  
11 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
12 serve copies of this Order and the Judgment on counsel for both  
13 parties.

14  
15 DATED: August 26, 2013

  
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JEAN ROSENBLUTH  
U.S. Magistrate Judge

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27 <sup>13</sup> This sentence provides: "The [district] court shall  
28 have power to enter, upon the pleadings and transcript of the  
record, a judgment affirming, modifying, or reversing the  
decision of the Commissioner of Social Security, with or without  
remanding the cause for a rehearing."